

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

**RESERVED ON : 28th JULY, 2016
DECIDED ON : 20th DECEMBER, 2016**

+ CRL.A.1746/2014

NAVEEN Appellant

Through : Mr.B.R.Kaushik, Advocate.
versus

THE STATE Respondent

Through : Mr.Panna Lal Sharma, APP.

AND

+ CRL.A.1367/2014

SUNITA Appellant

Through : Mr.B.R.Kaushik, Advocate.
versus

THE STATE Respondent

Through : Mr.Panna Lal Sharma, APP.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J.

1. Aggrieved by a judgment dated 03.09.2014 of learned Addl. Sessions Judge in Sessions Case No.04/2014 arising out of FIR No.208/2009 PS S.P.Badli by which Naveen (A-1) under Sections 304 Part-I/201 IPC and Sunita (A-2) under Section 201 IPC were held guilty, they have filed the instant appeals. By an order dated 06.09.2014, A-1 was sentenced to

undergo RI for ten years with fine ₹5,000/- under Section 304 Part-I IPC and RI for three years with fine ₹2,000/- under Section 201 IPC; A-2 was sentenced to undergo RI for three years with fine ₹2,000/- under Section 201 IPC. The sentences were to operate concurrently.

2. Briefly stated, the prosecution case as reflected in the charge-sheet was that on 18.08.2009 at Kale Ka Makan, Mahaveer Park, Gali No.1, Bahadurgarh Jhajjar, A-1 inflicted injuries to Anil Kumar and committed his murder. Subsequently, A-1 and A-2 in furtherance of common intention removed victim's body from the spot and threw it near Bawana canal, behind DTC Depot, Sector 18 Rohini with an intention to cause disappearance of the evidence and to screen themselves from legal punishment.

3. On 20.08.2009 at about 06.55 a.m. PW-8 (Jai Bhagwan) noticed a dead body lying on the banks of Bawana canal in a jute bag. He made call at 100; PCR van reached. On receipt of DD No.5A (Ex.PW-13/A) SI Ashok Kumar along with Const.Joginder reached the spot. Crime team was called; photographs were taken. On search of the body, one black colour purse was recovered containing driving licence and RC in the name of Anil Kumar. PW-7 (Vinod Kumar) identified it to be the body of his brother Anil Kumar. Post-mortem examination on the body was conducted. Statements of the witnesses conversant with the facts were recorded. A-1 and A-2 were arrested vide arrest memos (Ex.PW-27/B & Ex.PW-27/A). Their disclosure statements (Ex.PW-27/F and Ex.PW-27/E) were recorded. Pursuant to the disclosure statements, certain recoveries were effected. Test Identification Proceedings were conducted for identification of the gold ring recovered at A-2's instance. Upon completion of investigation, a charge-

sheet was filed against the appellants in the Court. In order to establish its case, the prosecution examined thirty-four witnesses. In 313 Cr.P.C. statements, the appellants denied their involvement in the crime and pleaded false implication. The appellants examined DW-1 (Karambir) in defence. The trial resulted in conviction as aforesaid. Being aggrieved and dissatisfied, the instant appeals have been preferred by the appellants.

4. I have heard the learned counsel for the parties and have examined the file.

5. At the outset, it may be mentioned that the entire case of the prosecution hinges upon circumstantial evidence. The learned Trial Court has noted various citations to discuss legal position regarding the standard of proof and the tests which the circumstantial evidence must satisfy. Needless to say, the circumstances from which the conclusion of guilt is to be drawn should be fully established; the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; the circumstances should be of a conclusive nature and tendency; they should exclude every possible hypothesis except the one to be proved, and there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

6. It is pertinent to note that the prosecution had charged A-1 for commission of offence under Section 302 IPC. It was neither the case of the prosecution nor that of A-1 that Anil Kumar was murdered by A-1 under grave and sudden provocation depriving him of the power of control as he

had seen the victim in a compromising position with his mother A-2 on the night intervening 18/19.08.2009. No legal evidence whatsoever has emerged on record to infer if during that night, the victim had established physical relation with A-2 or he was found in compromising position by A-1. No such defence was set up by A-1 during trial. It is unclear as to how the Trial Court came to the conclusion that A-1 had seen his mother in compromising position with the deceased and he, under sudden and grave provocation, committed his murder. The findings of the Court below based upon surmises and conjectures are not supported by acceptable legal evidence. Only in the disclosure statement (Ex.PW-27/E), A-1 is stated to have disclosed about it. This disclosure is not admissible in evidence. The findings of the Trial Court basing conviction under Section 304 part-I IPC are unsustainable. Strange enough, the State did not challenge A-1's acquittal under Section 302 IPC.

7. Admitted position is that after Anil Kumar's body was found lying at Bawana canal behind DTC Depot, Sector 18 Rohini on 20.08.2009. The police contacted his family members after ascertaining his identity from the driving licence and RC in the purse. PW-1 (Sudesh), deceased's wife disclosed that on 18.08.2009 at about 09.30 a.m., Anil, her husband had left for Bawana Industrial Area on motorcycle for some work; he being in business partnership there. He was wearing black jeans pant, blue shirt and a gold ring in his hand. When he did not return till evening, she tried to contact him on his mobile but it did not respond and was found switched 'off'. So was the position on the next day. On 20.08.2009, in the morning, the police visited her and on seeing his driving licence, she identified it to be that of her husband. Her brother-in-law PW-7 (Vinod Kumar) accompanied

the police and identified the body. She further disclosed that Anil Kumar had a mobile No.9910744612. He had illicit relations with A-2 and had assisted her financially after she had abandoned her husband; he was regular visitor at A-2's residence at Bahadurgarh.

8. On 18.08.2009, the deceased had left house at around 09.30 a.m. on motorcycle No. DL 8SNB 3850 and his body was found on 20.08.2009 in the morning at Bawana canal. No cogent evidence has come on record to establish as to at what places the victim had gone before his death. PW-1 (Sudesh) did not disclose the exact destination where the victim had gone at about 09.30 a.m. on 18.08.2009. Nothing has emerged on record as to on what date and time, the victim had finally arrived at A-2's residence at Bahadurgarh, and if so, by what mode. After the deceased did not return for about two days, PW-1 (Sudesh) or her relatives did not lodge any 'missing person' report with the police. They did not suspect appellants' involvement in his disappearance / crime. PW-1 (Sudesh) did not make any efforts to find out her husband's whereabouts. Only when on 20.08.2009, the police visited her with the driving licence, she came to know about his murder. No plausible explanation has been offered by PW-1 (Sudesh) as to why no sincere efforts were made to find out the whereabouts of the victim after he failed to return for about two days without any sound reasons.

9. PW-1 (Sudesh) was aware of her husband's relations with A-2. As per her own version, Anil Kumar was regular visitor to A-2's residence at Bahadurgarh; he had illicit relations with her. Despite that, she did not attempt to contact A-2 to ascertain if her husband had visited her that day. Victim's movements from the time he left his residence on 18.08.2009 at

09.30 a.m. till his body was found on 20.08.2009 have not been ascertained and proved beyond reasonable doubt. It is unclear as to when and at what time the victim visited A-2's residence. It is also not clear if on 18.08.2009 before coming to A-2's residence, the deceased had gone somewhere else also. No business partner has been examined in this regard.

10. As per the prosecution case, the deceased had visited A-2's residence during the night intervening 18/19.08.2009. During that night, he was seen in a compromising position by A-1 and it provoked him to commit his murder. The prosecution has relied upon the testimonies of PW-5 (Santosh), PW-9 (Ram Prasad) and PW-15 (Dr.Dharambir). PW-5 (Santosh) used to live with his brother-in-law PW-9 (Ram Prasad) on the first floor of the premises in question owned by PW-10 (Ram Niwas). PW-5 (Santosh) deposed that on 19.08.2009 at around 06.00/07.00 a.m. when A-2 told him that one of her relatives had become unconscious, he went downstairs to her residence and saw a man aged 40 - 45 years lying unconscious; there was some movement in his body and he thought it to be a case of epilepsy. He put a shoe near his nose but he remained unconscious. Thereafter, he along with A-2 went to call a doctor on his motorcycle; doctor refused to visit the house and asked them to bring the patient at his clinic. They returned to the house. In the meanwhile his brother-in-law PW-9 (Ram Prasad) came back from night duty and took the said individual in a three-wheeler to some hospital. In the cross-examination, PW-5 (Santosh) admitted that there was no blood oozing out from the nose or mouth of the said individual; he had not seen him before.

11. PW-5 (Santosh) in his Court statement did not claim if the 'relative' seen by him at A-2's residence that day was the victim Anil

Kumar. He did not suspect any foul play. He did not reveal as to when the said individual had visited A-2's residence. He did not inform the police about any foul play. He was not aware as to where the said individual was taken in a three wheeler and what happened to him thereafter.

12. PW-9 (Ram Prasad) in Court statement deposed that on 19.08.2009 when he returned after duty at 07.15 a.m., a boy (A-1) informed him that his 'guest' was not feeling well and they wanted him to take him to hospital. Thereafter, he along with A-1 and his mother (A-2) took the said 'guest' aged around 40 years to Mission Hospital where after medical examination he was declared brought dead. The body was brought back to A-2's residence in the said three-wheeler. In the cross-examination, he informed that the 'guest' was unconscious when being taken to hospital and did not have any external injury; no blood was coming out on the visible parts of the body.

13. Again, PW-9 (Ram Prasad) did not disclose that the 'guest' who was taken to the hospital was the victim Anil Kumar. He was also not aware as to when he had visited the A-2's residence. He did not claim if he had seen him to be a regular visitor at A-2's residence. He also did not inform the police about any untowards incident.

14. PW-15 (Dr.Dharambir), BAMS, Mission Hospital, Bahadurgarh, Haryana disclosed about the visit of a 'male' patient accompanied by a lady and 2 – 3 other attendants at around 07.00 a.m. on 19.08.2009. As per his testimony, he tried to know the brief history from his attendants and it was informed that he was suffering from heart ailments. On examination, the patient was found 'dead'. PW-15 (Dr.Dharambir) did not prepare any record or MLC of the visit. He identified A-2 to be the lady

who had accompanied the deceased. PW-15 (Dr.Dharambir) did not suspect any foul play. No visible external injury was found on victim's body. He did not intimate the police. He did not prepare any record and was unable to reveal the names of the attendants accompanying the patient.

15. From the testimonies referred above, an inference can be drawn about an individual's presence at A-2's residence on 19.08.2009 at around 07.00 a.m. but it has not been established with certitude that the said individual was the victim. The prosecution did not explain as to how and in what manner victim's body was found far away from the appellants' residence. If the prosecution version is taken as correct that A-1 under grave and sudden provocation had inflicted injuries to the victim during night, there was no occasion for them to inform their neighbours or to take the victim to the Mission Hospital.

16. No credible evidence has come on record to show if both A-1 and A-2 lived together in the said premises, and if so, since when. PW-10 (Ram Niwas), the landlord had let out the premises to A-2 on a monthly rent of ₹3,000/- about 8 or 9 months prior to the occurrence. His statement under Section 161 Cr.P.C. was recorded on 25.08.2009. In his examination-in-chief, he did not disclose if A-1 also used to live with A-2 in the said premises. In the cross-examination, he disclosed that at the time of collecting rent once in a month, he used to visit the premises in question. He did not know who else used to live with A-2 and her family in the rented accommodation. He was categorical to state that he used to meet only A-2 during his visits for collecting the rent. He was unable to say if A-1 also used to live with A-2 in the said premises. The Investigating Agency did not collect any document like ration card, voter ID card to ascertain if A-1 was

also residing along with A-2 in the said premises. PW-5 (Santosh) and PW-9 (Ram Prasad) living on the first floor of the said premises did not specifically depose if on the ground floor, A-1 used to stay with her mother, and if so, since when. In the disclosure statement allegedly recorded by A-2, it has come on record that she used to reside in the said premises along with A-1 and his elder mentally retarded son Praveen. The Investigating Agency did not examine Praveen to infer as to when and at what time the victim had visited the house. In the presence of A-2's elder son Praveen in the house, it is highly unbelievable that the victim would establish physical sexual relationship with A-2. It has not been clarified as to at what particular place, A-1 had gone during that night, when on return, he suddenly found A-2 and the victim in compromising position. Contrary to that, the appellants have examined DW-1 (Karamvir), A-2's husband. He categorically claimed that his elder son Praveen was not mentally fit for about 15 – 16 years and was missing for the last about three and a half years. He further claimed that he was having good relations with his wife A-2. On 18/19.08.2009 he was present along with his brother in his village Badli. His son was also residing with him and he was a driver. In the cross-examination also he disclosed that A-1 lived at Badli along with his grand-mother even when his wife A-2 and son Praveen shifted to Bahadurgarh in 2005. DW-1 (Karamvir) is not expected to give a false statement to favour A-2 against whom PW-1 (Sudesh), victim's wife, has levelled serious allegations of illicit relations with him.

17. Testimony of PW-16 (Raghubir Singh) on the circumstances of last seen is suspect. He admittedly was familiar with the deceased's father-in-law Ram Kishan. Ram Kishan and PW-16 (Raghubir Singh) were

colleagues. The occurrence took place on the night intervening 18/19.08.2009. Raghubir Singh's statement was recorded after a considerable delay. As per his testimony, he had seen the victim in the company of A-2 on 18.08.2009 at about 04.00 p.m. at Nehru Park Market, Delhi Rohtak Road; the victim was accompanied by A-2 and a 'boy'. He, however, was unable to identify if A-1 was the said individual present along with A-2 that day. PW-16 (Raghubir Singh) was not aware of the commission of murder and purportedly came to know about it when he met his colleague Ram Kishan after about three months on 18.11.2009. Only at that time he apprised Ram Kishan about his meeting with his son-in-law in the company of A-2. PW-16 (Raghubir Singh) is a chance witness and his statement to have seen the victim in the company of A-2 on 18.08.2009 at Nehru Park Market cannot be believed in the absence of any corroboration. No evidence has come on record to show if on 18.08.2009 Raghubir Singh had visited his sister-in-law's residence at Nehru Park.

18. Recovery of Santro car bearing registration No.DL 4CR 2312 at A-1's instance is of no consequence. It was allegedly recovered on 25.08.2009 from an 'open' place accessible to the public at large. No independent witness was associated at the time of recovery of the said car vide seizure memo (Ex.PW-29/G). The local police was not associated at the time of said recovery. It has come on record that the said car was not registered in the name of A-1. As per PW-18's testimony, this vehicle was registered in the name of India Export House Pvt. Ltd. on 13.10.2003. Its ownership was transferred in the name of Rajesh Rathi on 28.01.2008. The detailed report in this regard is Ex.PW-18/A. The Investigating Agency did not find out as to whom the vehicle in question was sold by its previous

registered owner, and if so, when. None of the prosecution witnesses examined by the prosecution has deposed if the vehicle in question was ever seen in appellants' possession any time. PW-11 (Rajesh Rathi) in his testimony before the Court informed that this vehicle was sold by him on 23.06.2008 to one Sanjay Mathur and an affidavit (photocopy of which is Ex.PW-11/A) was executed. It is, however, not clear as to when Sanjay Mathur sold the vehicle in question to any of the appellants. No evidence has emerged on record to show if the vehicle in question was used to transport the 'body'.

19. Recovery of motorcycle of the deceased vide seizure memo (Ex.PW-29/J) on 25.08.2009 from Industrial Area Sector-8, Badli, is of no much relevance to connect the appellants with the crime. Allegedly the motorcycle No.DL 8SNB 3850 belonged to the deceased and he had travelled upon it on 18.08.2009. The vehicle was recovered from an open place again accessible to the public at large. It is not clear as to how the motorcycle was abandoned as 'unclaimed' on 19.08.2009, and if so, by whom and for what purpose. None of the prosecution witnesses examined by the prosecution informed if the victim had arrived at the appellants' residence on this vehicle. This vehicle was recovered at a far distance away from the place of the appellants' residence at Bahadurgarh.

20. Recovery of golden ring at the A-2's instance from the drawer of the table at her residence on 25.08.2009 vide seizure memo (Ex.PW-27/G) cannot be taken as incriminating circumstance. Ring (Ex.P1) was allegedly recovered by A-2 against whom there are no allegations of commission of murder. It has come on record that the victim and A-2 were acquainted with each other and the victim used to financially assist A-2.

Possession of ring belonging to the deceased with A-2 is of no 'consequence'. Apart from this, no cogent and credible evidence has emerged to infer if this ring was owned by the victim. There was no specific mark of identification over the ring. A-2 was not expected to keep the ring in question after about five days of the incident in the open drawer.

21. FSL reports (Ex.PW-30/A & Ex.PW-30/B) reveal that though blood was detected on seat cover of the car, however, its group could not be ascertained. It is not clear as to whom the blood group 'O' as recorded in Ex.PW-30/B belonged. Ex.7a (shirt), Ex.7b (baniyan) and Ex.7c (pants) did not reveal the blood group of the blood. It has come on record that the victim had not suffered any external injury. PW-5 (Santosh), in the cross-examination, was categorical to admit that there was no blood oozing out from the mouth or nose of the patient. Similarly, PW-9 (Ram Prasad), in the cross-examination, revealed that the patient was having no external injury and no blood had come out on the visible part of the body. PW-15 (Dr.Dharambir) when medically examined the patient brought to him on 19.08.2009 did not find any visible injury on the body. He was unable to disclose the cause of death. From the brief history taken by him from the individuals accompanying him, it was informed that the patient was suffering from heart ailment. PW-15 (Dr.Dharambir) as observed above did not prepare any MLC. PW-24 (Dr.K.Goyal) had conducted post-mortem examination on the body. As per his report (Ex.PW-24/A), cause of death was cerebral damage (head injury) as a result of blunt force impact. He also informed that no external injury was seen on the body. Under these circumstances, detection of blood on various articles seized by the police is suspect.

22. Call Details Record produced on record does not establish appellants' complicity in the crime. As per call details of A-1's phone No.9278346006; he was in touch with his mother A-2 on various dates at different times from different locations. It does not reflect if any call was made to the victim. Call details record of victim's phone No.9910744612 shows that he was in touch with A-2 on 16.08.2009, 17.08.2009 & 18.08.2009. Again, these calls exchanged between the two were from different / same locations. The prosecution did not produce on record any convincing document to show the victim's location at the relevant time on the relevant date with A-2 at her residence. Merely because certain calls were exchanged between the victim and A-2, it has no bearing as both of them were acquainted with each other.

23. No evidence has been collected by the Investigating Agency as to when and in what manner the 'body' was transported from A-2's residence to the spot where it was found abandoned. It has come on record that on 25.08.2009 both the appellants were arrested from their residence at Bahadurgarh. Apparently, they had not absconded after the alleged crime. The victim's wife had not suspected their involvement and her statement was recorded on 20.08.2009; she did not suspect any one. It is pertinent to note that victim's wife was not satisfied with the investigation and it was subsequently transferred to Special Staff. Record reveals that victim's wife had moved an application / complaint before Commissioner of Police on 23.09.2009. She had suspected the involvement of one Baljeet and Karamvir (A-2's husband) in the crime. The Investigating Agency, however, did not find any material against them to face trial. Karamvir rather appeared in defence as DW-1.

24. The prosecution was unable to establish appellants' motive to commit victim's murder. As discussed above, no cogent evidence has been adduced to establish if A-1 had seen both the victim and A-2 in compromising position. It has come on record that A-2 and the victim had illicit relations since long and the victim had financially assisted her after she had abandoned her husband Karamvir. No complaint whatsoever was lodged by victim's wife any time against A-2 for her conduct. A-1 (A-2's son) did not object to regular visits of the victim in A-2's house. DW-1 (Karamvir) has given statement in favour of A-2 stating that relations with her were cordial. Non-examination of A-2's other son Praveen causes serious dent in the prosecution case.

25. In the light of above discussion, I am of the considered view that the prosecution has failed to establish its case against both the appellants beyond reasonable doubt. Conviction and sentence recorded by the Trial Court are unsustainable and are set aside. The appellants deserve benefit of doubt and are acquitted. The appeals are accordingly allowed.

26. A-1 shall be released forthwith if not required to be detained in any other criminal case. Bail bond and surety bond of A-2 stand discharged.

27. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information / compliance.

(S.P.GARG)
JUDGE

DECEMBER 20, 2016 / tr